

Provision of Legal Aid for Asylum-Seekers,
Refugees, and Others Forcibly Displaced in Asia

Country-Level Memorandum: Indonesia



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The information in this memorandum is based on informal discussions with relevant agencies/organizations, which does not constitute legal advice and/or an official product of such relevant agencies/organizations. Such agencies/organizations include, among others, the United Nations High Commissioner for Refugees (“UNHCR”), the International Organization for Migration (“IOM”) and the Indonesian Civil Society Association for Refugee Rights Protection (“SUAKA”), a discussion of each of which is presented below under “SOURCES”.

BACKGROUND

Indonesia has not ratified and is not a party to the 1951 Refugee Convention relating to the status of refugees (the “1951 Convention”) and its 1967 Protocol. It has been reported that in practice, legal aid for refugees, asylum-seekers and stateless persons in Indonesia is limited to the provision of assistance in the application process to UNHCR in Indonesia (“UNHCR INDONESIA”), to become a refugee under international law.

Despite the above, Indonesia has its own set of laws and regulations regulating matters of refugees and asylum-seekers, which in principle merely handles the management of refugees, asylum-seekers and stateless persons to be provided a temporary shelter in a safehouse (Rumah Detensi). This is set out under Law No. 37 of 1999 on Foreign Relationship (“Law No. 37/1999”), which includes an instruction to have the Government of Indonesia (“Government”) issue an implementing regulation on the management of refugees from abroad. Such instruction was then implemented by the issuance of Presidential Decree No. 125 of 2016 on Management of Refugees from Abroad (“PresDecree 125”) on 31 December 2016, which essentially regulates the handling of foreign refugees in Indonesia. It may be observed that the spirit of the 1951 Convention is embedded within Law No. 37/1999 and PresDecree 125 in Indonesia.

Even prior to the issuance of PresDecree 125, there was a regulation that addressed a similar matter, which was the Director General of Immigration Regulation No. IMI-0352.GR.02.07 on the Handling of Illegal Immigrants which is Self-Declared as Asylum-seekers or Refugee (“Dirjen Reg.0352”), dated 19 April 2016. The Dirjen Reg.0352 has not been revoked but in practice, as confirmed by UNHCR, the PresDecree 125 is preferred internally by the Directorate General of Immigration under the Indonesian Ministry of Law and Human Rights in Indonesia (“Immigration Office”) in handling the issues on refugees which in spirit is in line with Dirjen Reg.0352.

For simplicity of reference, both PresDecree 125 and Dirjen Reg.0352 will be referred to as “Refugee Regulations”.

Definitions

Definition of Legal Aid

Indonesia is not a member party to the 1951 Convention; hence, a specific definition of the term “Legal Aid” is not available under Indonesian laws and regulations. For purposes of our research and this memorandum, we have referred to the definition of “legal aid” as provided under the UNDP/UNODC Global Study on Legal Aid 2018 (Page 8).¹

Similarly, the terms “State Funded Legal Aid” or “State Funded Sources” are not defined under Indonesian laws and regulations. Therefore, as elaborated below, reference to the latter terms indicates that under Indonesian laws and regulations, along with the on-the-ground practice, state funded sources of legal aid primarily address the physical needs of the Target Group as opposed to providing legal assistance, in the context of due process of law as implemented in the court system.

Definition of Target Group

For purposes of this memorandum, the “Target Group” consists of:

- Asylum-seekers (and others seeking protection, e.g., CAT claimants²)

An “asylum-seeker” (*pencari suaka*) is generally defined under Dirjen Reg.0352 as a foreigner who holds an asylum-seeker identification card issued by UNHCR INDONESIA. There is no further elucidation on this definition. The Ministry of Foreign Affairs is currently assisting the president to draft the presidential decree in relation to asylum-seekers, but a draft of the presidential decree is not yet available for the public. Accordingly, the definition provided under Dirjen Reg 0352 above may be subject to further changes.

For reference, the UNHCR website³ defines asylum-seeker as someone who identifies himself or herself as a refugee, but whose claim for international protection has not yet been assessed by UNHCR or a competent Government authority.

¹ General Assembly resolution 67/187, The UN Principles and Guidelines states that, “*the term ‘legal aid’ is defined as ‘legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require.’ Furthermore, ‘legal aid’ is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.*” (last accessed in 26 January 2022, https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf)

² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 22 March 2022]

³ <https://www.unhcr.org/asylum-seekers.html>

- Refugees

A “refugee” (*pengungsi dari Luar Negeri*) is defined under PresDecree 125 as a foreign individual who is present in the territory of the Republic of Indonesia due to a well-founded fear of persecution based on race, tribe, religion, nationality, being a member of a certain social community, and dissimilar political opinion in his/her origin country, who desires to receive protection and/or has received the status of an asylum-seeker or refugee from the United Nations through UNHCR INDONESIA. Under Dirjen Reg.0352, a refugee is defined as a foreigner who holds a refugee identification card issued by UNHCR INDONESIA.

For reference, although Indonesia is not a member state thereof, the 1951 Convention similarly defined refugee as a person who as a result of events occurring before 1 January 1951 and owing to well-founded fears of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

- Stateless persons

Law No. 12 of 2006 on Nationality (“Nationality Law”) loosely regulates how an individual who is subject to the terms and conditions prescribed within the Nationality Law and the regulations thereunder may apply for Indonesian citizenship. However, to date there are no specific laws and regulations in Indonesia which address the issues on stateless persons as mentioned under the 1951 Convention and its 1967 Protocol or other international treaties.

The Convention Relating to the Status of Stateless Persons (the “1954 Convention”) defines stateless persons as a person who is not considered as a national by any State under the operation of its law. Please also note that Indonesia is not a state party to the 1954 Convention either.

Definition of State-Funded and Non-State Funded Legal Aid

For purposes of this memorandum:

- “State funded legal aid” consists of legal aid models that are funded by the host state (e.g., private, public or private/public partnership as per p.82 of the United Nations Office on Drugs and Crime Report); and

- “Non-state funded legal aid” consists of pro bono services provided and funded by civil society, including pro bono legal services from the private sector, university legal clinics, legal non-governmental organizations (“NGOs”) and other non-state organizations that are involved in providing legal aid.

Please note, UNHCR INDONESIA is not a state entity, and while it is funded in part by contributions from States, unless it was providing legal aid on behalf of a host country it would fall into the “civil society” category.

STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

The Refugee Regulations only define refugees and asylum-seekers within the definition of “refugee from foreign country”, excluding stateless persons, as part of the Target Group eligible for legal aid. Pursuant to the Nationality Law, stateless persons may request to be naturalized as an Indonesian citizen. Given the foregoing, from this point forward and for the purpose of this memorandum, any reference to the Target Group excludes stateless persons.

As of the date of this publication, there is no regulation in Indonesia that specifically regulates asylum-seekers and the eligibility of the Target Group to receive legal aid. However, there are public reports that the Ministry of Foreign Affairs is currently assisting the President to draft the presidential decree to specifically address asylum-seekers.

Based on our interview with UNHCR INDONESIA:

- Based on the Indonesian 1945 Constitution and its Amendments, and the fact that Indonesia has signed the ASEAN Human Rights Declaration as well as the International Covenant on Civil and Political Rights, any person inside the territory of Indonesia should in theory be protected and receive equal treatment.
- Nonetheless, the legal framework that is currently available to refugees, asylum-seekers and other displaced persons typically includes the Refugee Regulations, where the definition of “refugees” mirrors the definition provided under Article 1 of the 1951 Convention.

Scope of State Funded Legal Aid

The Refugee Regulations only provide that the Government shall coordinate and impose policies on the discovery, provision of shelter, security and immigration watch for the Target Group. Nonetheless, the Refugee Regulations refer to other organizations such as

IOM and UNHCR INDONESIA in the Dirjen Reg.0352 to execute any follow-up actions to assist the Target Group that have been recorded by the immigration authorities upon their entries at the borders. In practice, this is also the case where the Government handles the administration for the Target Group, while NGOs provide further assistance on their livelihood facilities (e.g., to provide water, shelter and food). To clarify, the nature and scope of legal aid in this context tends to address the physical needs of the Target Group, rather than to provide legal assistance. To that extent, there is no specific regulation which sets out in detail the available “menu of pro bono services” for asylum-seekers in Indonesia.

However please see below for further discussion.

Based on the prevailing laws in Indonesia, any entity is eligible to be a party at any stage of court legal procedure in Indonesia, both civil and criminal. Pursuant to Article 56(1) of the Criminal Procedure Law of Indonesia, suspects punishable by a minimum of 5 (five) years jail sentence must be provided with advocates if they cannot afford one to represent them throughout the entire legal proceeding. This would effectively apply to members of the Target Group if they are accused of committing any crimes in Indonesia.

Further, based on our interviews with the following institution(s):

IOM

- The Target Group typically only receives state-funded aid in the form of a place to stay in safe houses. However, legal aid resources are commonly facilitated using non-state funded aid sources.
- In practice, the P2TP2A (*Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak*) under the National Commission on Violence Against Women (*Komnas Perempuan*) and National Commission of Child Protection (KPAI) are more heavily involved in facilitating refugee issues at Indonesian borders and entry points, than any other Government body. The Indonesian immigration authorities focus more on the administration of refugees or other displaced persons upon entering Indonesia. These institutions handle issues of refugees and other displaced persons using a referral system, in which cooperation and communication between institutions will often occur based on the needs of the respective refugees or other displaced person.

UNHCR INDONESIA

- When it comes to asylum related matters, UNHCR INDONESIA will work on determining the status of members of the Target Group. UNHCR INDONESIA will help with the Refugee Status Determination (“RSD”) application, determine their status and adjudicate their claims. Such RSD process will essentially entail

identification of the individual's nationality or country of origin and whether the individual suffices in having the status of a refugee or asylum-seeker.

- However, UNHCR INDONESIA's scope of work in Indonesia is limited to the administration aspect of the refugees or asylum-seekers, and may not interfere with domestic issues involving the refugees or asylum-seekers.
- Given such limitations, once UNHCR INDONESIA has determined a person's status, UNHCR INDONESIA will refer him or her to UNHCR INDONESIA's partners such as SUAKA or IOM, or possibly legal aid firms (LBH / Lembaga Bantuan Hukum) for legal matters.
- The P2TP2A under the National Commission on Violence Against Women and National Commission of Child Protection also often help with refugee-related issues involving women and children. Their help typically consists of mediating domestic conflicts, marriage conflicts, child custody conflicts, divorce, etc. Nonetheless, P2TP2A's help is limited to providing advice and recommendations, rather than financial or direct legal assistance.

As mentioned above, any type of aid available to members of the Target Group in Indonesia would be provided/coordinated by NGOs and/or pro bono advocates, which focus on matters in relation to refugees and asylum-seekers. Assistance from the Indonesian authorities (i.e., regional offices of the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration) is limited to the provision of safe houses as temporary settlements for refugees or asylum-seekers.

Eligibility Criteria

As confirmed by UNHCR INDONESIA, as long as the relevant individual of the Target Group receives the status of an asylum-seeker or refugee from the United Nations through UNHCR INDONESIA, he/she will be eligible to receive the type of aid mentioned above.

For stateless persons, it would be easier for them to apply for naturalization as they do not have to face the issue regarding dual citizenship prohibition.

According to UNHCR INDONESIA, the legal system does not acknowledge the marriages of refugees that are conducted abroad. However, when UNHCR INDONESIA worked with the Civil Registry in Indonesia, children of refugees who are born in Indonesia should in principle be entitled to Indonesian citizenship, based on Article 4 of Law No. 12 of 2006 on Indonesian Nationality. However, the issue arises when seeking recognition from the Government (via the General Directorate of General Legal Administration under the Ministry of Law and Human Rights), which in practice may be reluctant to acknowledge citizenship of children who were born from refugee parents. Because approaching the Government is not reported to be easily accessible for refugees, it creates even more uncertainties for children who were born from refugee parents in Indonesia. Nevertheless, in practice the implementation may vary in different locations in Indonesia,

in relation to which we are currently not aware of any pragmatic/quantitative research on the differences between the law and its implementation.

Structure and Procedures

Process for Obtaining Legal Aid

Essentially legal aid is provided on a case-by-case basis, whereby any individual (of the Target Group) directly reaches out to non-governmental agencies (e.g., UNHCR INDONESIA, IOM and SUAKA) and/or governmental agencies dealing with refugee matters. However, given the reported absence of any Government-issued regulations on the procedures of providing legal aid to the Target Group, governmental agencies in Indonesia would refer any reports coming in to them to such non-governmental agencies.

The legal framework that stipulates whether an individual is recognized as a refugee or asylum-seeker is essentially governed in Dirjen Reg.0352 and PresDecree 125. The latter regulations grant the authority to provide aid to members of the Target Group to the UNHCR INDONESIA (in providing the stipulation of a refugee and asylum-seeker through a certificate issued by the UNHCR INDONESIA) and the regional offices of the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration (in providing the cooperation with UNHCR INDONESIA and/or IOM in managing the refugees and/or asylum-seekers). To that extent, based on our conversations with UNHCR INDONESIA, IOM and SUAKA, we have summarized the following procedure to obtain legal aid, including but not limited to stipulation of the refugee or asylum-seeker status from UNHCR INDONESIA (based on the approach done in practice):

- *Procedure 1: Findings*

This relates to the identity (i.e., nationality, country of origin) search/examination process conducted by the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration, via the assistance of the following authorities (if necessary):

1. National Army Force of Indonesia;
2. National Police of Indonesia;
3. Ministerial agencies on transportation;
4. Agencies on sea transportation related to sea safety; and
5. Any other ministerial agencies on transportation.

Which authorities are involved in the findings depends on the location in which the refugees are found. For example, for refugees traveling by sea to Indonesia, their findings may be assisted with the help of the Indonesian Navy. Meanwhile those refugees which have entered into the mainland may be discovered by the National Police of Indonesia. Another example is the immigration department,

which conducts these findings procedures at the Indonesian border entries, including at airports and seaports.

The relevant authorities will report to the Immigration Office for the next step of handling the refugees that they found. In this case, UNHCR INDONESIA also worked with the Immigration Office in handling the next step.

- *Procedure 2: Identification*

The ministerial agency or the Immigration Office (in coordination with local Government (City/Regency) to identify an accommodation/shelter for refugees) will deliver the refugees and/or asylum-seekers to the safe houses/shelters and identify the individuals based on their documents (e.g., passports, ID cards, and UNHCR INDONESIA given documents). Such identification will be coordinated with UNHCR INDONESIA and/or IOM to provide assistance in identifying the refugees' documentation.

- *Procedure 3: Stipulation as refugee or asylum-seekers and the management of legal aid*

Subject to the identification process above and international laws, UNHCR INDONESIA will provide refugees and asylum-seekers with a certificate (a UNHCR document to cover both cards or certificate/under consideration letter) stipulating their status.

After the issuance of such a certificate by UNHCR INDONESIA, the regional offices of the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration will arrange (with the assistance of UNHCR INDONESIA and/or IOM) (1) shelter/safehouses as temporary resettlement for the refugees or asylum-seekers, or (2) voluntary returns to the refugees' home countries.

Comments from UNHCR INDONESIA:

- According to the Refugee Regulations, individuals must be referred to UNHCR INDONESIA by the Immigration Office if they seek asylum and/or stipulation of status by means of receiving the certificate from UNHCR INDONESIA.
- Alternatively, refugees may also approach UNHCR INDONESIA directly via email, WhatsApp, UNHCR's inquiry platform called KOBO and/or other available media. Nevertheless, in providing legal aid, practically speaking, UNHCR INDONESIA provides such aid on a case-by-case basis to all persons of concern that include refugees, asylum-seekers and stateless persons.
- According to UNHCR INDONESIA, evidentiary support is important to UNHCR's individual case processing to substantiate asylum claims that are presented. However, it is not the only factor to determine eligibility of the refugees. During

the refugee status determination process, a credibility assessment will also be conducted by UNHCR INDONESIA to determine the eligibility of the refugees or asylum-seekers.

According to UNHCR INDONESIA, there is no specific regulated obligation given by law to the individuals when they are found to be eligible for legal aid. Instead, they are only required to abide by the laws of Indonesia as any person inside the territory of Indonesia does. Additionally, they are strongly encouraged to report to the relevant agencies such as UNHCR INDONESIA, IOM, SUAKA or others, of their status – especially when it relates to legal procedures undertaken with Indonesian officials or courts. Considering the amount of reports received by such agencies, they will process the most urgent cases first.

There are no specific exceptions made by the Government or state funded legal aid programs towards the Target Group. Instead, exceptions may be made by respective relevant NGOs and/or IOM in handling the Target Group, which will be explained below.

Process for Providing Legal Aid

Legal aid would in practice be referred by the Immigration Office to be handled by IOM, relevant NGOs and/or UNHCR INDONESIA, or directly provided by pro bono lawyers, IOM and/or agents of UNHCR INDONESIA.

For rural areas, there are also regional offices of the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration, which cooperates with UNHCR INDONESIA and/or IOM in managing the refugees and/or asylum-seekers. The cooperation may also entail Legal Aid subject to the needs and situation of the relevant Target Group.

Financing of Legal Aid

Pursuant to Article 40 of the PresDecree 125, the management of refugees and asylum-seekers is funded by the National State Budget provided through the relevant ministry and/or agencies, and/or other sources pursuant to the laws and regulations (international assistance, for example from the European Union).

Despite the above, according to UNHCR INDONESIA, the Government typically does not fund legal aid for refugees and asylum-seekers, except for the facilities such as safehouses provided to them. Depending on the region, the government may occasionally fund legal aid subject to their discretion and policy.

Barriers

Availability of Interpretation/Translation Services

Interpretation services are typically provided if facilitated by the relevant NGOs, IOM and/or UNHCR INDONESIA handling the Target Group. This is an issue when members of the Target Group are not English-speaking or originate from foreign countries which do not use English as a common language (e.g., Iran, Afghanistan and African countries), because finding an official and registered interpreter would be difficult – especially when the Target Group is in a rural area or distant regions far from a main city in Indonesia.

In practice, there is a pattern that as long as the Target Group can speak a little English, the police/immigration officers/other relevant government officials will be able to have some communication with them. However, this can, on accounts, be ineffective and ultimately may delay the provision of aid to the Target Group.

According to UNHCR INDONESIA, statistics show there are individuals coming from around 50 countries seeking refuge and asylum in Indonesia, which would create a challenge for UNHCR INDONESIA and NGOs in handling them. Usually, UNHCR INDONESIA can provide interpreters to translate documents and to assist during counselling with the refugees. Without the involvement or presence of UNHCR INDONESIA or other NGOs, it is very difficult to bridge the communication barriers with the refugees.

Geographic Limitations

Although there are regional offices of the Ministry of Law and Human Rights of Indonesia – Directorate General of Immigration (that manage refugees and/or asylum-seekers in cooperation with UNHCR INDONESIA and/or IOM), the typical issues encountered in distant regions are the lack of facilities such as safehouses, internet and healthcare. The apparent absence of the relevant NGOs or government agency may affect the provision of legal aid (i.e., absence of contact persons for refugee-based organizations and governmental agencies assisting refugee-related matters).

However, irrespective of geographical limitations, because each region has its own policies, certain regions may provide better facilities and legal aid, and better assistance to the Target Group than others. The problems arising from geographical limitations typically appear when the relevant NGOs, IOM and/or UNHCR INDONESIA cannot properly reach the Target Group or do not have the resources to do so. Additionally, as mentioned above, access to interpreters is definitely an issue when access to the Target Group is geographically limited.

In addition, according to UNHCR INDONESIA, in areas where UNHCR INDONESIA has no presence, there are cases where the court does not provide attorneys for legal

representation of the refugees facing criminal charges. The Indonesian Criminal Procedure Law only facilitates legal representation for those with a minimum 5 (five) years' punishable sentence.

Other Barriers to Accessing Legal Aid

In practice, UNHCR INDONESIA has a rather prolonged bureaucratic process for conferring the status of refugees and asylum-seekers, which would need to be presented to the authorities in Indonesia (e.g., Immigration Office, directorate general of immigration and police), and for them to formally acknowledge such individuals as refugees and asylum-seekers.

An initial registration of the refugees and asylum-seekers, which typically cover their nationality and country of origin, will typically take a few hours to complete. However, this may be subject to delay due to the bureaucratic process and technological challenges in isolated areas where the registration process takes place. Nevertheless, once the individual is registered, they become a person of concern to UNHCR INDONESIA (asylum-seeker) and from that moment, they will be eligible to receive legal assistance and aid from UNHCR and its partners. In some cases, especially detention cases, UNHCR provides protection intervention even before the individual is registered with UNHCR.

Further, based on our interviews with IOM, other barriers to accessing legal aid include:

- State intervention in facilitating refugees or other displaced persons is minimal, as Indonesia has not ratified the 1951 Convention. The handling of refugees or other displaced persons in each region varies depending on the respective regional government's policy. By law, the Indonesian Immigration authority is responsible for the legal aspects of those entering Indonesia, including refugees or other displaced persons. A person is only considered to be a refugee upon the declaration by the UNHCR INDONESIA.
- Another repercussion of Indonesia not ratifying the 1951 Convention is that it causes uncertainty to the futures of refugees or other displaced persons. While integration into the community or naturalization may be a long-term solution in solving the refugee crisis, the solution currently implemented by the Indonesian Government is either to facilitate their temporary stay in shelters or to repatriate them back to their origin countries. For those refugees or other displaced persons who cannot be repatriated back, they are held in shelter houses for an indefinite time. Throughout the years that IOM has been carrying out its mission, it has encountered refugees who have stayed in shelter houses for more than 10 (ten) years.

NON-STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

Based on our interviews with the following institutions, the Target Group is eligible for non-state funded legal aid as follows:

IOM:

- All members of the Target Group, upon arriving in Indonesia, are eligible for the rights of livelihood, food, education, housing and legal aid, which are mostly provided by UNHCR INDONESIA and relevant NGOs.
- So long as the arriving refugees or other forcibly displaced persons are reported to UNHCR INDONESIA, IOM or other relevant NGOs, they will be facilitated in Indonesia. Any issues and legal problems faced by the refugees or other forcibly displaced persons will be aided by the UNHCR INDONESIA, IOM or other NGOs.
- The aid provided by UNHCR INDONESIA, IOM, and NGOs prioritizes restorative settlements over legal measures. If the use of legal measures is inevitable, it will be used as a last resort. In such cases, legal aid institution(s), or LBH (*Lembaga Bantuan Hukum*), will be involved. There is no fee imposed on the refugees or other displaced persons for this.

SUAKA:

- Pursuant to Article 56(1) of the Criminal Procedural Code of Indonesia (KUHAP), any suspects punishable by a minimum of 5 (five) years jail sentence must be represented by advocates. This applies to members of the Target Group when they are accused of committing any criminal actions in Indonesia.
- The Target Group may access legal aid provided by SUAKA; however, SUAKA does not provide direct financial support to the Target Group. Instead, SUAKA will refer those in need of additional support to other organizations such as to the Catholic Relief Service or Jesuit Refugee Service for financial support and/or the Church World Service for health support.
- The Target Group may also obtain legal aid if the relevant NGOs or government institutions have the capacity to handle the Target Group member's legal interest, or if they are referred to a legal aid organization like LBH.
- Since 2018, members of the Target Group, upon entering Indonesia, no longer have to spend their time inside Immigration shelter houses, and may access the relevant refugee facilities, provided that such facilities are available in that region.
- SUAKA will provide consultations before deciding to decline or proceed further to provide any legal aid to the Target Group.

UNHCR INDONESIA:

- In practice, UNHCR INDONESIA would not exclude any individuals within the definition of the Target Group from receiving legal aid and will typically refer cases to its partners (legal aid agencies) as it deems suitable.

Scope of Non-state Funded Legal Aid

There are no specific regulations that restrict or limit the scope of services that can be provided to the Target Group. Further, based on interviews with the following institutions:

IOM:

- Despite the uncertainty of procedures for handling refugees in Indonesia, it is essential for members of the Target Group to be formally acknowledged by UNHCR INDONESIA first as to whether they can be considered a refugee or asylum-seeker. Without this status, the relevant NGO or government institution will have no capacity over the person.

SUAKA:

- For SUAKA, they will only handle and have capacity over asylum-seekers or refugees. In this case, SUAKA assists the asylum-seekers and refugees through the Refugee Status Determination (RSD) process by UNHCR INDONESIA. SUAKA's involvement here is mainly to assist UNHCR INDONESIA, which runs the RSD process. Such assistance may include, but is not limited to, documentation and on-the-ground support. Nevertheless, such assistance is provided on a case-by-case basis, subject to discussion with UNHCR INDONESIA.
- If legal issues encountered by the Target Group do not fall within SUAKA's scope, SUAKA will refer it to the relevant legal aid institutions ("LBH" or "YLBHI", which stand for *Yayasan Lembaga Bantuan Hukum Indonesia* or *the Indonesian Legal Aid Foundation*) if necessary.
- SUAKA will not process or handle cases for Target Group members that clearly involve acts of bad faith. An example is when a member of the Target Group repeatedly committed the crime and there is evidence of their repeated crime or misconduct.

UNHCR INDONESIA:

- Typically, there are no restrictions applied, since the Government tends to not normally intervene in the provision of legal aid. UNHCR INDONESIA believes this could be somewhat advantageous; however, this means that little participation or no contribution may be expected from the Government to help with legal aid.

- In relation to RSD processes, UNHCR INDONESIA has the authority to process refugees from all countries. However, issues arise when the government questions why certain nationalities or people are granted refugee status by UNHCR INDONESIA, due to their lack of knowledge on the background of the refugees from their respective countries. For example, when refugees come from wealthy and developed countries, the Government may question why UNHCR INDONESIA granted them refugee status.
- The RSD process is conducted by UNHCR INDONESIA to decide whether a person meets the definition of a refugee under the Convention.

With respect to legal aid for non-asylum related matters, interviews with the participating institutions revealed as follows:

IOM:

- There is no established practice at either national or regional levels on the provision of legal aid to Target Group members. Therefore, it is determined on a case-by-case basis whether members of the Target Group will receive legal aid support for non-asylum related matters.
- Legal aid given to members of the Target Group will solely depend on the facilities that are available in the region of their entry to Indonesia. It is common to find that regions have different governmental policies and different quality of facilities provided.

SUAKA:

- Target Group members may be eligible for legal aid for non-asylum related matters based on the discretion of the law enforcer, agency or institution handling them. There is no apparent established practice between each region to determine the actual non-asylum related matters or type of legal aid that they will receive.
- Due to the lack of established practice and clear regulations on integrating the Target Group with the local region, some civil services directed to them are unclear/inconsistent. An example of this is the record for birth from the Target Group of foreign origin, in which case there are uncertainties on whether the Indonesian Civil Registry may legally record them in the civil register.
- For legal issues in civil or criminal cases, members of the Target Group may reach out to SUAKA at any stage of the case and even when the hearing has already taken place. It is reportedly common for law enforcement officers to try to speed up the process whenever possible; hence, it is critical for a member of the Target Group to contact UNHCR INDONESIA or SUAKA when such member of the Target Group is party to a civil or criminal case.

UNHCR INDONESIA

- Since UNHCR INDONESIA maintains a non-intervention principle, they rely on their legal partners or other partners to handle the refugees' cases. For example, in courts or legal procedures, legal aid firms may be engaged by UNHCR INDONESIA to assist the refugee.
- However, these partners of UNHCR INDONESIA have restrictions, such as when refugees are facing human trafficking, drug or human smuggling cases, which typically require UNHCR INDONESIA to approach other private lawyers with fees required.
- As a result, there is a limitation on what type of legal aid can be provided to members of the Target Group depending on the situation.

Financing of Non-State Funded Legal Aid

Both IOM and SUAKA receive their funding for services throughout Indonesia from private funding and donations. The services they provide are limited and dependent on the funding they receive.

According to SUAKA, because the funding is limited, it is common for certain cases to be terminated due to the lack of funding. Therefore, in accepting a case, SUAKA will use their judgment to determine their capacity both in expertise and financial capabilities.

According to UNHCR INDONESIA, when it comes to hiring private lawyers, UNHCR INDONESIA funds the private lawyers. UNHCR INDONESIA does not pay for the lawyer fees for legal aid firms (LBH / *Lembaga Bantuan Hukum*), but UNHCR INDONESIA may provide them with logistical assistance such as contact with interpreters, data resources, etc. In any case, UNHCR INDONESIA will only provide the required funding based on their discretion and financial capability.

Structure and Procedures

Based on interviews with the following institutions, the process for accessing non-state funded legal aid is as follows:

IOM:

- Typically, IOM handles and provides their services to members of the Target Group upon referral by other relevant institutions in the region where such members of the Target Group enter Indonesia.

SUAKA:

- SUAKA commonly handles and provides services to members of the Target Group following a referral from other institutions or if they are contacted via email. Usually, a Target Group member who contacts SUAKA via email does not provide a complete story or chronology of the problems they face. If the information they convey is not clear, then SUAKA will ask further questions about the problems and assistance they need from SUAKA.

UNHCR INDONESIA:

- Regarding the RSD process, there is a Know Your Rights handbook for refugees provided by UNHCR INDONESIA that was drafted by UNHCR, SUAKA, Jesuit Refugee Service Indonesia (“JRS”) and Sandya Institute.
- While in general the burden of proof lies with the person submitting the claim, the obligation to gather and analyse all relevant facts and supporting evidence is shared between the applicant and the decision maker/UNHCR.
- UNHCR INDONESIA applies a credibility indicator and identification of background to the refugees. If these indicators are fulfilled, then UNHCR INDONESIA may decide whether to grant their claim to receive a refugee status.

Based on interviews with the following institutions:

SUAKA:

- There are no specific restrictions imposed by SUAKA to assist the concerned Target Group.
- However, as described above, SUAKA usually determines on a case-by-case basis whether a particular Target Group individual is within SUAKA’s capacity.
- SUAKA does not provide services to economic migrants, or those moving to Indonesia seeking more financial support.

UNHCR INDONESIA:

- If refugees hold UNHCR INDONESIA required documents, such as the document confirming their refugee status, then they will be put under UNHCR INDONESIA protection. With these documents, they will be assisted by UNHCR INDONESIA and/or UNHCR INDONESIA’s partners.
- If they lose their documents, their data is still maintained within the UNHCR INDONESIA system.
- Refugees have the right to undergo an appeal process if their asylum application is rejected at the first instance by UNHCR INDONESIA under the RSD system due to lack of eligibility. This is to ensure that refugees may properly substantiate their reasons to be acknowledged as refugees in Indonesia.

- Their refugee status does not expire until a durable solution to their refugee issue is found, namely, voluntary repatriation or local integration. Otherwise, they may be referred to other third countries. This is out of UNHCR INDONESIA's hands, and would ultimately depend on the government to make policies for naturalization or other living arrangements. Countries of resettlement also decide on the quota or place for refugees in Indonesia, and can also impose criteria for refugees to be resettled to their respective country.

Barriers

Availability of Interpretation/Translation Services

According to SUAKA, there is no established best-practice for law enforcement agents to treat people who do not speak English fluently or with minimum understanding of English. This issue is amplified with the limited access to interpreters, especially to refugees originating from countries with less common languages.

Geographic Limitations

- SUAKA: SUAKA will refer cases outside Jakarta to LBH in related locations. However, there is still a lack of access in rural areas that do not have legal aid organizations nearby. LBH that has not communicated or collaborated with SUAKA or legal aid organizations do not necessarily understand the issue of refugees.
- UNHCR INDONESIA: Indonesia is a vast territory. UNHCR INDONESIA does not have a presence in all major cities, let alone distant regions where refugees may stay or enter Indonesia. However, UNHCR INDONESIA has established email addresses, WhatsApp, hotlines and other communication channels to provide access to contact them. In addition, UNHCR is continuously expanding partnership with legal actors across Indonesia, including in areas where UNHCR has no presence.

Other Barriers to Accessing Legal Aid

Based on the interviews with the following institutions, other barriers to accessing non-state funded legal aid resources were identified as follows:

- SUAKA: It is unclear whether a member of the Target Group must be accompanied by a lawyer during any particular legal process, as there is no established practice nor clear regulation yet (except if the criminal act is punishable with at least a 5-year jail sentence). It is often the case that members of the Target Group face language barriers when dealing with law enforcement and are not accompanied

by a lawyer at all during the investigation and examination process of a case. These barriers can be detrimental to their rights.

It is often difficult for the Civil Registry to record refugees/asylum-seekers residing in Indonesia as they are technically foreign citizens, and Indonesian laws do not allow for dual citizenship. This could be a problem when refugees give birth to a child while inside the territory of Indonesia, as it is likely that the Civil Registry cannot issue a birth certificate due to identification issues relating to such child refugee's parents.

- UNHCR INDONESIA: UNHCR INDONESIA has limitations on its human resources and capacity. They will select and prioritize urgent cases (e.g., detention cases and forced deportation cases), and will follow up on other less urgent matters subsequently. Alternatively, UNHCR INDONESIA may also liaise with other governmental agencies and urge them to participate and assist, if those agencies' duties indeed relate to the handling of refugees.

With respect to accessing legal aid from legal representatives in legal cases, Law No. 16 of 2011 on Legal Aid requires each person to provide a statement letter proving his or her financial incapability, to be issued by the local authorized official where the person is domiciled. This poses an issue for refugees as they have no legal domicile in Indonesia.

SOURCES

For the purpose of this research, we have liaised with and were assisted by the following organizations, providing legal aid assistance to the Target Group:

International Organization for Migration (IOM)⁴

Established in 1951, the International Organization for Migration (IOM) – UN Migration – is the leading inter-governmental organization dedicated to promoting humane and orderly migration for the benefit of all. It does so by advancing the understanding of migration issues, assisting governments in meeting the challenges of migration, encouraging social and economic development through migration and upholding the dignity and well-being of migrants, their families and their communities.

With 173 member states, a further 8 states holding observer status and offices in over 100 countries, IOM also works to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

⁴ <https://indonesia.iom.int/>

The IOM Constitution recognizes the link between migration and economic, social and cultural development, as well as to the right of freedom of movement.

In Indonesia, IOM operations date back to 1979 with the processing of Vietnamese boat people arriving in Tanjung Pinang port, Riau Islands. Since then, IOM's activities have expanded both in terms of geographic reach and target population.

Today, IOM Indonesia is one of the largest IOM missions in the world, with over 300 staff members located across the country and working on a wide range of activities in partnership with the Government, civil society and the donor community.

IOM Indonesia works in broad areas of migration management:

- Counter Trafficking and Labor Migration
- Disaster, Climate and Resilience
- Immigration and Border Management
- Migrant Assistance
- Migration & Development
- Migration Health
- Resettlement and Assisted Voluntary Return

SUAKA⁵

SUAKA is an Indonesian NGO focused on the protection of refugee rights in Indonesia. SUAKA was formally registered with the Ministry of Law and Human Rights in 2018 as an association. Its work began much earlier, when LBH (*Lembaga Bantuan Hukum*, or "legal aid institution") Jakarta and the Human Rights Working Group (HRWG) agreed to establish Indonesian civil society networks for the protection of refugee rights in October 2012.

SUAKA started with a small team of volunteers and recently expanded with three staff. The volunteers mainly include pro bono lawyers and paralegals, while students, researchers and professionals support a variety of its areas of work. In addition to its dedicated volunteers, two staff are currently working to oversee SUAKA's programs and daily operations. Its head office is situated in Jakarta, a city that hosts 7,000 asylum-seekers and refugees (ASR). Requests for consultation come from ASR, who are living in Jakarta and the surrounding areas. SUAKA occasionally receives requests from other cities that have ASR populations, such as Medan and Makassar. On such occasions, SUAKA responds to the case by coordinating with its network in those cities.

⁵ <https://suaka.or.id/>

UNHCR INDONESIA⁶

UNHCR, also known as the UN Refugee Agency, is a member of the United Nations Development Group, which is governed by the UN General Assembly. The primary purpose of UNHCR is to safeguard the rights and well-being of people who have been forced to flee their country of origin. Together with partners and communities, UNHCR Indonesia works to ensure that everybody has the right to seek asylum and find safe refuge in another country and to provide lasting solutions for these asylum-seekers.

In late 2016 the President of the Republic of Indonesia signed the Presidential Regulation on the Handling of Refugees (PresDecree 125), which contains key definitions and sets out processes for the detection, shelter and safeguarding of refugees and asylum-seekers. It is anticipated that provisions contained within the Presidential Regulation will be implemented in the near future and that it will bring about closer working relationships between the Indonesian Government and UNHCR, including joint registration of asylum-seekers.

UNHCR's protection activities begin with ensuring that refugees and asylum-seekers are protected from *refoulement* – in other words, from forced return to a country or territory where their lives or freedom might be in danger. UNHCR then undertakes a process of verification of identity for the purpose of registration and issuance of individual documentation.

Registered asylum-seekers will then be scheduled to have their claims for refugee status thoroughly assessed by UNHCR in what is known as an RSD Procedure. This procedure offers each individual asylum-seeker an opportunity to be interviewed in his/her own language by an RSD officer assisted by a qualified interpreter, who will assess the merits of the individual's claim for international protection.

The asylum-seeker will be then provided with a reasoned decision on whether they qualify for refugee status under UNHCR's mandate. In case one's claim for protection is initially rejected, the RSD procedure grants the asylum-seeker an opportunity to appeal the negative decision.

For those found to be refugees, UNHCR will begin to look for one of a range of what UNHCR calls comprehensive solutions. Traditionally, these solutions have included resettlement to a third country, voluntary repatriation (if a person is able to return in safety and dignity) and local integration in the country of asylum.

However, in the current global refugee crisis, with at least 79.5 million persons displaced around the world, UNHCR is working to identify a range of other solutions, including: temporary stay measures that allow refugees access to self-reliance opportunities until

⁶ <https://www.unhcr.org/id/en/unhcr-in-indonesia>

a longer-term solution can be found; complementary pathways, such as university scholarships, labor migration schemes and State-facilitated family reunification.

Finding an appropriate longer-term solution for each refugee is a complex and often lengthy process that involves considering the particular circumstances of the individual or family and identifying solutions that match their particular needs.



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This document is part of a collaborative, multi-jurisdictional research project on the availability of legal aid to refugees in Asia for use by refugees, other displaced people, and the lawyers and organizations that work with them. It was compiled by Oentoeng Suria & Partners in association with Ashurst and provides information on both state and non-state funded legal aid in Indonesia.

Law firms participating in this research are not liable toward third parties for the accuracy of the general information contained in this guide. The memorandum is not intended to provide, nor should it be relied on, as legal advice. Legal advice should be sought for any specific individual circumstance. If you find any inaccuracies in this document, please inform PILnet at grfpledge@pilnet.org.

If you are an individual seeking further information and contact details about legal aid providers in Indonesia, please see the country page for Indonesia on [Rights in Exile](#) or [UNHCR's Help](#) platforms.

If you are an organization seeking to be matched with free legal assistance for your organization or your refugee clients, please click [here](#) to learn more about [PILnet's Refugee Legal Assistance Matching Mechanism](#).